

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Instream Lease Application) DETERMINATION and
IL-1070 and Preliminary and Final Award) FINAL ORDER ON PROPOSED
of Mitigation Credits, Certificate 83571,) INSTREAM LEASE and MITIGATION
Deschutes County) CREDIT PROJECT

Authority

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Lessor #1

Eagle Crest, Inc.
1522 Cline Falls Rd.
Redmond, OR 97756

Lessor #2

Central Oregon Irrigation District (COID)
1055 SW Lake Court
Redmond, OR 97756
lauraw@coid.org

Lessee

Deschutes River Conservancy (DRC) Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On March 12, 2010, the DRC Mitigation Bank, COID and Eagle Crest, Inc., filed an application to renew instream lease L-372, involving a portion of Certificate 76358 (primary irrigation) and 76714 (supplemental irrigation).
2. On September 26, 2007, Certificate 83571 was issued superseding Certificate 76358.
3. The request to renew the instream lease did not include the supplemental irrigation right. In addition, since IL-372 was originally leased instream, the amount of water that may be diverted from the points of diversion for Certificate 83571 have been further affected (reduced) by allocation of conserved water projects, instream transfers, and other actions. As a result, the amount of water that may be diverted for the portion of the right proposed to be

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

leased instream has been further reduced from the amount identified in the original final order approving IL-372, as evidenced by Special Order Volume 57, Page 589. Finally, this application is now proposed to generate mitigation credits in the Deschutes Ground Water Study Area. Therefore, the Department is assigning this lease a new lease number to distinguish it from IL-372. The lease is now assigned application number IL-1070.

4. Interest in a portion of the water right to be leased instream has been conveyed from the original land owners. The lease application identifies Eagle Crest as Lessor #1 and COID as Lessor #2. Individual conveyance agreements (recorded Quit Claim deeds), along with supporting documentation, identify that interest in a portion of the right to be leased is held by COID. The Department has determined that COID is an interest holder in the right and is authorized to lease the pertinent portion of the water right instream.
5. On April 29, 2009, COID submitted a revised application map clarifying a portion of the right to be leased.
6. The portion of the right to be leased has been clarified from the lease application and is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District

Use: Irrigation of 23.6 acres from POD #1 (Central Oregon Canal) and 48.6 acres from POD #11 (North Canal Dam)

Priority Date: October 31, 1900 and December 2, 1907

Season of Use: April 1 to September 15, further limited as follows:
 April 1 through April 30 and Oct. 1 through Oct. 31 described herein as Season 1
 May 1 through May 14 and Sept. 15 through Sept. 30 described herein as Season 2
 May 15 through Sept. 14 described herein as Season 3

Quantity: **Rate:** Season 1: limited to 1/80th cubic foot per second (CFS) per acre
 Season 2: limited to 1/60th CFS per acre
 Season 3: limited to 1/32.4th CFS per acre

Duty: 9.91 Acre-Feet (AF)

The above listed rates and duty reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18S	11E	W.M.	13	SW-NE	POD #1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
17S	12E	W.M.	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	POD	Additional Place of Use Description Provided in Application - Tax Lot at time of Quit Claim
15S	13E	W.M.	9	SW NW	28.9	11	500 – 7.65 acres
							505 – 4.35 acres
							507 – 16.9 acres
15S	13E	W.M.	9	SE NW	15.4	11	500 – 4.4 acres
							503 – 6.7 acres
							507 – 4.3 acres
15S	13E	W.M.	9	NE SW	4.3	11	101
17S	14E	W.M.	28	NW SE	5.8	1	2901
17S	14E	W.M.	28	SW SE	17.2	1	2902
17S	14E	W.M.	28	SE SE	0.6	1	2900

7. The Department has information that the season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 15 through September 30 described herein as Season 2

May 15 through September 14 described herein as Season 3

8. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #6), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs (described in Finding of Fact #6), the portion of the right involved in this instream lease would be limited as described in the tables below. These rates and duty are also the quantities by which the diversion at POD #1 and POD #11 under Certificate 83571 shall be reduced, if this instream lease is approved.

POD #1 – Central Oregon Canal				
Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.294 CFS	0.392 CFS	0.518 CFS	232.86 AF
December 2, 1907			0.207 CFS	
POD #11 – North Canal Dam				
October 31, 1900	0.606 CFS	0.808 CFS	1.068 CFS	480.40AF
December 2, 1907			0.428 CFS	

9. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). The lease was public noticed as IL-372. No comments were received.

10. The instream use has been modified from the original lease application and is consistent with current instream use calculations. The instream use is as follows:
Deschutes River, tributary to the Columbia River

Instream Reach #1: From Central Oregon Canal POD #1 to North Canal Dam POD #11
(both as described in Finding of Fact #6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	Season 1: 0.162 Season 2: 0.216 Season 3: 0.401	128.63	April 1 – Oct. 26

Instream Reach #2: From North Canal Dam POD #11 to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	Season 1: 0.496 Season 2: 0.662 Season 3: 1.226	393.52	April 1 – Oct. 26

11. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 83571 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

12. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact #6. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
13. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
14. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
15. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. Transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of future leases or transfers.
16. The Lessor has requested that the lease terminate on October 31, 2012. The lease will commence the date the Final Order is signed and on April 1 of each succeeding calendar year that the lease is in place.

17. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

18. The Lessee, a mitigation bank chartered by the Water Resources Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.

19. The Department assigned this mitigation credit project number MP-131.

20. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). The Department also provided notice of the mitigation credit project to the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2). No comments were received.

21. No modifications were made to the lease based on the comments received.

22. The proposed lease of 72.2 acres of irrigation use to instream use will provide 130.0 AF of mitigation water. Therefore, the Department finds that 130.0 mitigation credits may be awarded to this mitigation credit project and assigned to the DRC Mitigation Bank. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Middle Deschutes and General Zones of Impact.

23. The mitigation credits expire on December 31, 2012.

24. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.

25. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of the Final Order approving the proposed instream lease shall result in completion of the project and verification that the project is complete.

26. No precedent is set by this Final Order as to the amount of mitigation credits that may be generated by a subsequent mitigation credit project.

CONCLUSIONS OF LAW

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

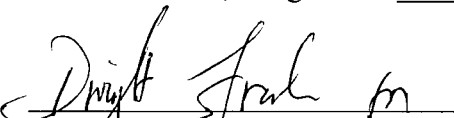
This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2012. For multiyear leases, the Lessor shall have the option of terminating the lease with written notice to the Department provided to both the Salem office and Watermaster office. Written notice of termination of a lease must be provided by all Lessors and the Lessee. The written notice to Salem office must include original signatures. The notice to the Watermaster office may be made by fax or e-mail. The lease may be terminated at any time during a calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (April 1) or after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
4. **Final Award of Deschutes Basin Mitigation Credits:** Issuance of this Final Order results in completion of the project and verification by the Department that the project is complete. The Department concludes that the mitigation credit project is awarded mitigation credits, as described above, pursuant to OAR 690-521-0400 and ORS 537.746. Mitigation Credits, in the amount of **130.0** credits, as described herein, are awarded to this mitigation project and assigned to the DRC Mitigation Bank. Mitigation Credits may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Middle Deschutes and General Zones of Impact**.
5. Mitigation credits are valid until used (or until they expire or are terminated) to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.
6. The mitigation credits shall expire on December 31, 2012.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this 30 day of April, 2010.


Phillip C. Ward, Director

Mailing date: MAY 04 2010